Supreme Court, U.S.
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No. 00-1514

IN THE

Supreme Court of the United States

LANCE RAYGOR and JAMES GOODCHILD,

Petitioners,

v.

REGENTS OF THE UNIVERSITY OF MINNESOTA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE MINNESOTA SUPREME COURT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the Minnesota Supreme Court correctly interpret precedent from this Court, including *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984), when it held that the Minnesota Court of Appeals' application of 28 U.S.C. § 1367 to the facts of this case conflicted with this Court's Eleventh Amendment jurisprudence?

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Respondent Regents of the University of Minnesota respectfully requests that this Court deny the petition for a writ of certiorari seeking review of the Minnesota Supreme Court's decision in *Regents of the University of Minnesota v. Raygor*, 620 N.W.2d 680 (Minn. 2001). The Minnesota Supreme Court did not declare that a federal statute, 28 U.S.C. § 1367, was unconstitutional. The Minnesota Supreme Court correctly analyzed and followed precedent from this Court when it reversed the Minnesota Court of Appeals' application of this statute to the circumstances of this case. This case does not present an issue warranting this Court's review.

STATEMENT OF THE CASE

Petitioners Lance Raygor and James Goodchild alleged that the University of Minnesota discriminated against them on the basis of their age in connection with decisions made regarding their employment at the University. On or about August 23, 1995, Raygor and Goodchild filed charges of discrimination with the Minnesota Department of Human Rights ("MDHR"). Pet. App. A43-45. Petitioners alleged that they were discriminated against on the basis of age in violation of the Minnesota Human Rights Act ("MHRA"). Specifically, petitioners complained about changes the University made in their job assignments in December 1994. Pet. App. A45.

On July 17, 1996, the MDHR dismissed petitioners' claims. Petitioners received notice of the dismissal by letter on or about July 18, 1996. In the letters, the MDHR advised each petitioner that he could bring a civil action against the University "in state district court" within 45 days of receipt of the letter. Pet. App. 46.

Petitioners did not timely file claims for violation of the MHRA, as alleged in the petition. Pursuant to the notice petitioners received from the MDHR, any claim for violation of the MHRA had to be filed in *state district court* within 45 days of the time petitioners received notice from the agency. Pet. App. A46 (emphasis added). Rather than follow this directive, petitioners chose to bring their claims for violation of the state law in a court that had no jurisdiction over such claims, the federal district court. Indeed, when the University served its motion to dismiss the federal court action, petitioners in effect conceded that the state law claims did not belong in federal court and they did not even oppose the University's motion to dismiss these claims; while petitioners briefed the motion to dismiss on the federal law claims, they did not even brief the motion on the state law claims.

The federal court dismissed the federal case because it was barred by the Eleventh Amendment, a defense the University had asserted from the beginning by raising it in its answers to the complaints. Pet. App. A50. Following dismissal of their federal court case, petitioners filed their MHRA claims in Hennepin County District Court, on or about July 31, 1997, and the action was stayed pending petitioners' appeal of the dismissal of their federal court case. Following the University's filing of a motion to dismiss, the trial court lifted the stay for the limited purpose of hearing the University's motion. The trial court granted the motion by Order and Memorandum dated May 28, 1999. As the trial court correctly noted, the MHRA claims were filed in state court more than 45 days after petitioners received notice of dismissal from the MDHR. Moreover, as the trial court recognized, there was no basis to toll the state law limitations period. Petitioners argued that § 1367 applied to toll the MHRA statute of limitations. The trial court rejected this

argument. The trial court correctly recognized that § 1367 did not apply in this case because petitioners' claims did not fall within the "original jurisdiction" of the federal court. *See* Pet. App. A29-32. Accordingly, petitioners' MHRA claims were dismissed on the basis of the state law statute of limitations. Pet. App. A27-A38.

Petitioners appealed the ruling to the Minnesota Court of Appeals. The appellate court reversed, finding that 28 U.S.C. § 1367 tolled Minnesota's statute of limitations. *See Raygor v. Regents of the University of Minnesota*, 604 N.W.2d 128 (Minn. Ct. App. 2000), *review granted* (March 28, 2000).[1] There is no dispute that petitioners brought their state court action well after the statute of limitations applicable to MHRA claims had expired.[2] Rather than arguing that their action was within the state law statute of limitations, petitioners instead argued to the Minnesota Court of Appeals, as they had to the trial court, that their filing of a federal court action increased the time period they had within which to bring their state law claims in state court.

1. In the alternative, the court held that the doctrine of equitable tolling applied. The equitable tolling question is not at issue in the petition.

2. Under the MHRA, lawsuits must be commenced within one year of the date of the alleged discriminatory actions, or if, as in this case, the alleged victim of discrimination chooses to commence the process through the agency, within 45 days of the date notice of dismissal is received from the MDHR. *See* Minn. Stat. §§ 363.06, subd. 3 and 363.14, subd. 1 (1998). Petitioners alleged that they were discriminated against in December 1994. They received notice of dismissal from the MDHR on July 18, 1996, and the state court action was not filed until July 31, 1997. Accordingly, petitioners did not meet either the one-year time limit or the 45-day time limit provided for in the MHRA.

The Court of Appeals agreed with petitioners and held that the filing of MHRA claims in federal court tolled the Minnesota statute of limitations because of 28 U.S.C. § 1367. According to the intermediate appellate court, the federal court had "mandatory supplemental jurisdiction" over the petitioners' MHRA claims under § 1367. *See Raygor*, 604 N.W.2d at 131, Pet. App. A21. Based upon this erroneous construction of the statute, the appellate court held that the tolling provision in § 1367(d) applied. With the statute of limitations tolled under § 1367(d), the Court of Appeals concluded that petitioners' MHRA claims — which were filed in state court well after the time period provided for in the MHRA — were timely.

The Minnesota Supreme Court granted the University's petition for review of the Minnesota Court of Appeals decision and reversed. *See Regents of the University of Minnesota v. Raygor*, 620 N.W.2d 680 (Minn. 2001). The Minnesota Supreme Court recognized that the Court of Appeals had made an error of law. The Minnesota Supreme Court did not hold that 28 U.S.C. § 1367(d) is unconstitutional on its face. Rather, the Minnesota Supreme Court held that the Minnesota Court of Appeals' application of § 1367(d) to the state law claims filed against the University was inconsistent with this Court's Eleventh Amendment jurisprudence. The Minnesota Supreme Court held that the Court of Appeals' "*application* of section 1367(d) in this case is an unconstitutional infringement on state sovereign immunity in violation of the Eleventh Amendment[.]" *Id.* at 681 (emphasis added), Pet. App. A2.

REASONS FOR DENYING THE WRIT

Petitioners argue that this Court should review the Minnesota Supreme Court's decision because it holds that § 1367 is unconstitutional and because a "definitive decision by this Court regarding the constitutional question presented is of especial importance." (Petition at 6). Petitioners are wrong. The Minnesota Supreme Court did not hold that § 1367 was not constitutional; it simply held that this statute did not apply to this case. It was the Minnesota Court of Appeals' decision — not § 1367 — that was unconstitutional because it conflicted with the Eleventh Amendment. Precedent from this Court drove the Minnesota Supreme Court's conclusion. Petitioners are therefore incorrect to suggest that there is a void that this Court needs to fill. Finally, the Minnesota Supreme Court's decision does not conflict with decisions from other courts. Accordingly, there is no important constitutional or federal question presented in this case that requires clarification from this Court.

1. The Minnesota Supreme Court's Decision Is Consistent With, And Was Compelled By, Decisions From This Court.

Congress passed 28 U.S.C. § 1367, the statute at issue in this case, in 1990. The statute is a jurisdictional statute, like 28 U.S.C. §§ 1331 (giving federal courts subject matter jurisdiction over cases that arise under federal law) and 1332 (giving federal courts jurisdiction over cases between citizens of different states). In § 1367, Congress gave federal courts subject matter jurisdiction over claims which lack an independent basis for federal jurisdiction (*i.e.*, state law claims between non-diverse parties), that are so related to

claims within the scope of the court's jurisdiction (*i.e.*, federal question jurisdiction), that the case can properly be viewed as one controversy. Section 1367 provides, in pertinent part:

> (a) . . . in any civil action of which the district courts shall have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. § 1367(a) (1994).[3]

If a claim is within the scope of § 1367, Congress provided that the statute of limitations for this claim would be tolled while the claim was pending in federal court. According to the statute: "The period of limitations for any claims asserted under subsection (a) . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d). Subsection (d) is the provision the Minnesota Court of Appeals relied upon to toll the statute of limitations for petitioners' MHRA claims. However, just like other jurisdictional statutes are limited by the Eleventh Amendment, § 1367 is also subject to the jurisdictional limitations of the Eleventh Amendment, as the Minnesota Supreme Court correctly recognized.

3. Prior to the adoption of § 1367, these non-federal claims were allowed to proceed in federal court under the common law doctrines of pendent and ancillary jurisdiction. *See, e.g., United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966).

The Eleventh Amendment provides: "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another Sate, or by Citizens or Subjects of any Foreign State." U.S. Const. amend. XI.[4] The Eleventh Amendment is a limitation on the judicial power of the United States, and therefore a limitation on the types of cases over which federal courts may exercise jurisdiction:

> "That a State may not be sued without its consent is a fundamental rule of jurisprudence having so important a bearing upon the construction of the Constitution of the United States that it has become established by repeated decisions of this court that *the entire judicial power granted by the Constitution does not embrace the authority to entertain a suit brought by private parties against a State without consent given . . .*"

Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 98-99 (1984) (quoting *Ex parte State of New York*, 256 U.S. 490, 497 (1921)).[5] Consistent with the Eleventh

4. While the text does not specify that the Amendment applies to claims by citizens of a state against their own state, it has been the law since 1890 that the Eleventh Amendment also prohibits these claims from being pursued in federal court. *See Hans v. Louisiana*, 134 U.S. 1 (1890).

5. It is beyond dispute that the University is an arm of the State of Minnesota entitled to the protections of the Eleventh Amendment. *See, e.g., Treleven v. University of Minnesota*, 73 F.3d 816, 819 (8th Cir. 1996).

Amendment, the "judicial power of the United States" did not "extend to" petitioners' MHRA claims, as the Minnesota Supreme Court properly held.

It is well settled that the Eleventh Amendment applies to state law claims, like the MHRA claims at issue in this case.[6] It has been the law since at least 1984 that state law claims against state sovereigns cannot be filed in federal court. These claims are simply outside the scope of federal court jurisdiction. *See Pennhurst State School Hospital v. Halderman*, 465 U.S. 89 (1984).[7]

In *Pennhurst*, a class action lawsuit was filed on behalf of residents of Pennsylvania's state-run institution for mentally disabled individuals. The residents alleged violations of federal law and asserted state law claims as

6. The Eleventh Amendment also barred petitioners' federal claims from being pursued in federal court as the federal court recognized in its ruling. Pet. App. A50. Accordingly, the federal case was not properly within even the "original jurisdiction" of the federal court, as it must have been for § 1367 to apply. 28 U.S.C. § 1367(a). The absence of "original jurisdiction" was the basis for the trial court's conclusion that § 1367 did not apply to this case. *See* App. A32.

7. *Pennhurst* was decided six years before Congress enacted § 1367. Congress gave no indication in passing § 1367 that it meant to overrule *Pennhurst*. The statute is silent on this point. Without a clear expression from Congress, the Minnesota Court of Appeals had no basis to apply § 1367 to the University. *See Dellmuth v. Muth*, 491 U.S. 223, 228 (1989) (" 'Congress may abrogate the States' constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear in the language of the statute.' ") (quoting *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985)).

well under the doctrine of pendent jurisdiction. With respect to the state law claims, the trial court found a violation. The Supreme Court ruled that the Eleventh Amendment barred the federal court from deciding the state law claims. The Court noted that "it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law." *Id.* at 106. *Pennhurst* holds that federal courts simply have no jurisdiction — pendent, "supplemental" or otherwise — over claims for violation of state law asserted against state sovereigns. *Id.* at 121 ("[N]either pendent jurisdiction nor any other basis of jurisdiction may override the Eleventh Amendment.").

As the Minnesota Supreme Court recognized, *Pennhurst* was dispositive of the issue presented in this case. This Court dealt with the exact issue raised: whether a federal court had jurisdiction over state law claims filed against a state by its own citizens. At the time *Pennhurst* was decided, the federal court could consider state law claims against private defendants that were appended to federal claims brought against those defendants if they were part of the same constitutional case, under the doctrine of pendent jurisdiction. *See, e.g., United Mine Workers v. Gibbs*, 383 U.S. 715 (1966). The question decided in *Pennhurst* was whether the common law doctrine of pendent jurisdiction applied to state defendants, and this Court ruled that it did not.

Section 1367's "supplemental jurisdiction" is simply the codification of the common law principle of pendent jurisdiction. *See* H.R. Rep. No. 734, at 27-28 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6873-74. If the common law version of the doctrine — pendent jurisdiction

— cannot constitutionally cover state law claims against states, there is no reason why the statutory version of this same doctrine — § 1367's "supplemental jurisdiction" — can cover these claims. *Pennhurst* resolved the issue by holding that these claims were not within the scope of federal jurisdiction. *Pennhurst* compelled the Minnesota Supreme Court's conclusion that § 1367 simply did not apply to petitioners' MHRA claims. Because § 1367 did not apply, the Minnesota Supreme Court correctly concluded that there was no basis to toll Minnesota's statute of limitations, and the petitioners' claims were properly dismissed as time barred.

The Minnesota Court of Appeals had dismissed *Pennhurst* with one sentence, concluding that "it must be read in conjunction with 28 U.S.C. § 1367. . . ." *Raygor*, 604 N.W.2d at 133, Pet. App. A24. This was a plain error of law, as the Minnesota Supreme Court recognized. Contrary to the suggestion by the Minnesota Court of Appeals, Eleventh Amendment jurisprudence has not changed or backed away from the conclusions in *Pennhurst*. Indeed, in recent Terms, this Court has continued its vigorous enforcement of the Eleventh Amendment as a bar to federal courts asserting *any* jurisdiction over claims against states. *See, e.g., Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000); *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666 (1999); *Seminole Tribe v. Florida*, 517 U.S. 44 (1996). *See also Alden v. Maine*, 527 U.S. 706, 754 (1999) ("States retain immunity from private suit in their own courts, an immunity beyond the congressional power to abrogate by Article I legislation."). Nothing in these cases supports the Minnesota Court of Appeals' suggestion that *Pennhurst* has been undermined. It is not *Pennhurst* that must be read in conjunction with § 1367 as the Court of Appeals suggested. Rather, it is § 1367 that must read against the

backdrop of *Kimel*, *College Savings Bank*, *Seminole Tribe*, *Alden*, and other cases where this Court has reaffirmed the Eleventh Amendment's limitations on federal jurisdiction. The Minnesota Supreme Court's decision is consistent with and was compelled by this jurisprudence.

Petitioners argue that the Minnesota Supreme Court's ruling would lead to duplicative lawsuits and inefficiencies. This Court has considered and squarely rejected this argument, as the Minnesota Supreme Court noted. The respondents in *Pennhurst* made exactly the same argument. This Court dismissed the argument:

> Respondents urge that the application of the Eleventh Amendment to pendent state-law claims will have a disruptive effect on litigation against state officials . . . It may be that applying the Eleventh Amendment to pendent claims results in federal claims being brought in state court, or in bifurcation of claims. That is not uncommon in this area . . . [T]he answer to respondents' assertions is that such considerations of policy cannot override the constitutional limitation on the authority of the federal judiciary to adjudicate suits against a State. That a litigant's choice of forum is reduced "has long been understood to be a part of the tension inherent in our system of federalism."

465 U.S. at 121-123 (citations and footnotes omitted). Some fifty years earlier, in *Missouri v. Fiske*, 290 U.S. 18, 25-26 (1933), this Court expressed the same view that the Eleventh Amendment trumps economy arguments like those petitioners offer here. The Court noted there that,

"[c]onsiderations of convenience open no avenue of escape from the [Eleventh Amendment's] restriction." *Id.* Petitioners offer no arguments here that support this Court's review of this precedent.

2. This Court Does Not Need To Resolve A Conflict In Decisions Construing Section 1367.

Petitioners suggest that the Minnesota Supreme Court decision is inconsistent with other decisions construing § 1367, and that this Court needs to grant review to resolve this conflict. There is no such conflict requiring review and resolution in this Court. Several courts have recognized, as did the Minnesota Supreme Court, that the "supplemental jurisdiction" provided in § 1367(a) does not and cannot undermine the Eleventh Amendment principles this Court applied in *Pennhurst*. *See, e.g.*, *Mascheroni v. Board of Regents of University of California*, 28 F.3d 1554, 1559 (10th Cir. 1994) ("That [plaintiff] attaches these state law claims to the Title VII complaint under the doctrine of supplemental jurisdiction does not render the Eleventh Amendment inapplicable"); *Lembach v. State of Indiana*, 987 F. Supp. 1095, 1098 (N.D. Ind. 1997) (since Eleventh Amendment bars state law claims, court cannot exercise supplemental jurisdiction over them under § 1367); *Doran v. Condon*, 983 F. Supp. 886, 890 (D. Neb. 1997) ("the grant of supplemental jurisdiction contained in 28 U.S.C. § 1367 cannot displace the Eleventh Amendment's explicit limitations on federal jurisdiction"); *Mayer v. University of Minnesota*, 940 F. Supp. 1474, 1476 (D. Minn. 1996) (Eleventh Amendment's "constitutional bar applies with equal force to pendent state claims"); *Clemes v. Del Norte County Unified School District*, 843 F. Supp. 583, 597 (N.D. Cal. 1994) (the effort in § 1367 "to streamline

procedural aspects of judicial access does not in any way support the substantive alteration of Eleventh Amendment jurisprudence"). *See generally* 16 *Moore's Federal Practice* ¶ 106.67, at 109-96 (3d ed. 1999) ("If the Eleventh Amendment applies directly to bar federal jurisdiction, the federal court of course cannot assert supplemental jurisdiction.").

The state cases that petitioners cite do not provide a basis for this Court to grant review. As set forth above, the Minnesota Supreme Court's decision was in accord with this Court's settled Eleventh Amendment jurisprudence. Moreover, the state intermediate appellate courts in the cases petitioners cite do not even appear to have addressed the question the Minnesota Supreme Court decided — that § 1367's "supplemental jurisdiction" does not apply to state law claims filed in federal court against a state sovereign. *See Blinn v. Florida Department of Transportation*, 2000 WL 1880213 * 6-7 (Fla. App. 1 Dist. Dec. 29, 2000) (holding that Congress had authority under the Necessary and Proper Clause to enact § 1367(d) and refusing to decide, because it was not timely raised, the argument that § 1367 does not apply because the federal court lacked jurisdiction over the state law claims); *Fennell v. Stephenson*, 528 S.E.2d 911, 915 (N.C. App. 2000), *review granted and decision pending*, 2000 WL 1269390, 352 N.C. 588 (Aug. 25, 2000)[8] (holding that Congress had power under the Necessary and Proper Clause to enact § 1367(d) and that the provision does not conflict with the Tenth Amendment).

8. The petition does not reflect that the North Carolina Supreme Court has granted review of this intermediate appellate court decision.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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